

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EARNEST J. MALONE and U.S. POSTAL SERVICE,
POST OFFICE, Long Beach, CA

*Docket No. 00-2026; Submitted on the Record;
Issued April 20, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has more than a 41 percent total impairment for the left upper extremity, for which he received two separate schedule awards of 20 percent and 21 percent.

In the present case, the Office of Workers' Compensation Programs accepted, in case number 13-1055400, appellant's claim for temporary aggravation of degenerative arthritis and right thumb surgery. By decision dated August 13, 1996, the Office granted a schedule award for a 25 percent impairment to the right upper extremity. On November 6, 1997 the Office awarded appellant an additional 16 percent permanent loss of use of the right upper extremity. Accordingly, appellant was awarded a total of 41 percent permanent loss of use of his right upper extremity.

The Office further accepted, in case number 13-1140760, the conditions of arthralgias, left metacarpophalangeal (MP) joint and left shoulder strain and impingement syndrome. On January 30, 1998 the Office combined appellant's former claim (file number 13-1055400) into this case. By decision dated July 14, 1998, the Office issued a schedule award for a 20 percent left upper extremity impairment. By decision dated March 9, 2000, the Office awarded an additional 21 percent permanent loss of the use of the left upper extremity. Accordingly, appellant was awarded a total of 41 percent permanent loss of use of his left upper extremity.

On appeal, appellant argues that he was not paid all the percentages due.

The only decision before the Board on this appeal is the Office's March 9, 2000 decision awarding appellant an additional 21 percent additional permanent loss of use of his left upper extremity to its previous award of 20 percent. Because more than one year has elapsed between the issuance of the Office's August 13, 1996 and November 6, 1997 decisions awarding a total of 41 percent permanent loss of use of the right upper extremity and the Office's July 14, 1998 decision awarding a 20 percent permanent loss of the left upper extremity and March 27, 2000,

the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the August 13, 1996, November 6, 1997 and the July 14, 1998 decisions.¹

The Board finds that appellant has no more than a 41 percent permanent impairment of his left upper extremity.

Section 8107 of the Federal Employees' Compensation Act² sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 1993) as an appropriate standard for evaluating schedule losses and the Board has concurred in such adoption.³

In order to meet his burden of proof, appellant must submit sufficient medical evidence to show a permanent impairment causally related to employment that is ratable under the A.M.A., *Guides*. Under the procedures promulgated by the Office, the evidence must show that the impairment has reached a permanent and fixed state and indicate the date this occurred, describe the impairment in detail and contain an evaluation of the impairment under the A.M.A., *Guides*.⁴

In the instant case, appellant's additional 21 percent permanent disability rating for the loss of use of his left upper extremity was based upon the October 6, 1999 medical report of Dr. Joan F. Wright, a Board-certified hand surgeon. Dr. Wright provided her examination findings and opined that appellant had plateaued in his recovery and had reached a point of maximum medical improvement. She further opined that appellant could work with restrictions. Dr. Wright noted that appellant had sustained new and additional injury to the right wrist, left thumb and left shoulder and provided an evaluation of appellant's impairment under the A.M.A., *Guides* (fourth edition 1993). Dr. Wright calculated a 34 percent right upper extremity impairment and a 41 percent left upper extremity impairment.

For the right upper extremity, Dr. Wright calculated a 34 percent impairment. Dr. Wright noted that impairment due to loss of range of motion was: flexion 2 percent, extension 0 percent (Figure 26, page 36); loss of radial deviation 2 percent, loss of ulnar deviation 2 percent (Figure 29, page 38) equated to a 6 percent upper extremity impairment. Impairment due to loss of strength: grip strength loss index of 90 percent gave a 30 percent upper extremity impairment (Table 34, page 65). Using the Combined Values Chart, page 322, the current total impairment for the right upper extremity equaled 34 percent.

¹ See 20 C.F.R. § 501.3(d)(2).

² 5 U.S.C. § 8107.

³ *James J. Hjort*, 45 ECAB 595 (1994).

⁴ Federal (FECA) Procedure Manual, Part 2 -- *Claims, Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (March 1995).

For the left upper extremity, Dr. Wright calculated a 41 percent impairment. Left thumb impairment values was calculated as follows: Impairment due to loss of range of motion: for the MP joint, loss of extension 2 percent (Figure 13, page 27), for the interphalangeal (IP) joint, loss of flexion 1 percent (Figure 10, page 26). For loss of opposition 1 percent (Table 7, page 29). Total 4 percent thumb equals 2 percent hand impairment (Table 1, page 18). This is a 2 percent upper extremity impairment (Table 2, page 19). Impairment due to loss of strength: grip strength loss index of 90 percent gave a 30 percent upper extremity impairment (Table 34, page 65). Left shoulder values were calculated as follows: Impairment due to loss of range of motion: loss of flexion 4 percent, loss of extension 2 percent (Figure 38, page 43), loss of abduction 5 percent (Figure 41, page 44), loss of internal rotation 1 percent, loss of external rotation 2 percent (Figure 44, page 45). Total 14 percent shoulder equals 14 percent upper extremity impairment. Using the Combined Values Chart, page 322, the total impairment for the left upper extremity equaled (shoulder, thumb, grip strength loss) 41 percent.

On February 21, 2000 the Office medical adviser reviewed the medical evidence of file and used Dr. Wright's October 6, 1999 report to render a determination of impairment of the left upper extremity. The Office medical adviser noted that, although Dr. Wright made an impairment determination for the right upper extremity, the actual determinations of the previous two schedule awards granted were not part of the file reviewed and were needed to determine whether there was an additional impairment of the right upper extremity. The Office medical adviser calculated a 41 percent left upper extremity impairment under the A.M.A., *Guides* (fourth edition 1993). Impairment due to loss of range of motion: for the shoulder, loss of flexion, 4 percent, and loss of extension, 2 percent (Figure 38, page 43); loss of abduction, 5 percent, and loss of adduction, 0 percent (Figure 41, page 44); loss of internal rotation, 2 percent, and loss of external rotation, 1 percent (Figure 44, page 45). This equated to a total of 14 percent. For the thumb, loss of flexion at the IP joint, 1 percent (Figure 10, page 26), loss of extension at the MP joint, 4 percent, and flexion at the MP joint, 0 percent (Figure 13, Page 27), loss of adduction, 0 percent (Table 5, page 28), loss of radial abduction, 0 percent (Table 6, page 28), loss of opposition, 1 percent (Table 7, page 29). This equated to a total of 6 percent. This represents a 2 percent hand and upper extremity impairment per Tables 1 and 2, pages 18 and 19. Impairment due to loss of strength: grip strength loss index of 90 percent equates to a 30 percent upper extremity impairment (Table 34, page 65). Using the Combined Values Chart, page 322, the total impairment for the left upper extremity equals 41 percent. Maximum medical improvement was reached on October 6, 1999.

The Office medical adviser's February 21, 2000 calculation of the percentage of impairment of appellant's left upper extremity conforms to the A.M.A., *Guides* (fourth edition 1993) and, therefore, constitutes the weight of the medical evidence.⁵ Consequently, appellant has failed to provide any probative medical evidence that he has greater than a 41 percent permanent impairment of his left upper extremity. Inasmuch as appellant was previously awarded a 20 percent impairment for his left upper extremity on July 14, 1998, the Office's award of an additional 21 percentage impairment on March 9, 2000 was proper.

⁵ See Bobby L. Jackson, 40 ECAB 593, 601 (1989).

The decision of the Office of Workers' Compensation Programs dated March 9, 2000 is hereby affirmed.⁶

Dated, Washington, DC
April 20, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ The Board notes that there appears to be some development in the record pertaining to appellant's right upper extremity as designated by the reports of Dr. Wright and the Office medical examiner. However, as no final decision has been issued by the Office, the Board does not have any jurisdiction over whether appellant is entitled to any additional impairment for his right upper extremity. 20 C.F.R. § 501.2(c).